

# **MISSOURI PUBLIC SERVICE COMMISSION**



## **COMMENTS TO THE FEDERAL COMMUNICATIONS COMMISSION**

*August 2011*

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**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D. C.**

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51
	)	
Establishing Just and Reasonable Rates for Local Exchange Carriers	)	WC Docket No. 07-135
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Developing an Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Lifeline and Link-Up	)	WC Docket No. 03-109

**COMMENTS OF THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

The Public Service Commission of the State of Missouri (“MoPSC”) submits comments in response to the Federal Communications Commission’s (FCC’s) August 3, 2011 Further Inquiry into Certain Issues in the Universal Service-Intercarrier Compensation Transformation Proceeding (“Further Inquiry”). The MoPSC previously filed comments regarding reforming the universal service fund (USF) and intercarrier compensation.<sup>1</sup> The MoPSC offers comments to certain issues raised in the FCC’s recent Further Inquiry. Section I pertains to specific reform issues related to Universal Service while Section II pertains to issues related to Intercarrier Compensation. In

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<sup>1</sup> Comments of the Missouri Public Service Commission filed on April 6, 2011 in this proceeding.

general, the MoPSC attempts to highlight and expand upon the MoPSC's prior comments as they relate to the specific issues presented in the FCC's Further Inquiry.

## **I. UNIVERSAL SERVICE REFORM**

The MoPSC is providing feedback concerning the following topics identified by the FCC's Further Inquiry: Public Interest Obligations, State Role, Ensuring Consumer Equity and Highest-Cost Areas. The FCC has also requested feedback concerning reform plans recently filed by various parties in terms of how such proposals comport with the FCC's articulated objectives and statutory requirements.

### **A. General Observations of Plans**

The FCC's Further Inquiry takes notice of certain reform plans submitted by various parties.<sup>2</sup> The MoPSC does not intend to provide a full analysis of these plans; however, two observations need to be made since certain concepts appear to be absent in certain plans. Any universal service reform efforts should ensure voice services remain reliable and affordable. In addition, any universal service reform effort should overhaul the USF contribution system.

*Reform Should Ensure Voice Service Remains Reliable and Affordable.*

The ABC Plan proposes to simply require a high-cost recipient to provide access to voice service and not be burdened with actually offering voice service.<sup>3</sup> This proposal

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<sup>2</sup> The FCC's Further Inquiry identifies three reform plans submitted by the following parties: (1) the "State Members Plan" submitted by State Members of the Federal-State Universal Service Joint Board, (2) the "RLEC Plan" submitted by the Joint Rural Associations and (3) the "America's Broadband Connectivity Plan" (ABC Plan) filed by six price cap companies and generally supported by the US Telecom Association.

<sup>3</sup> Attachment 1, pages 2-3, of the correspondence submitted by AT&T, CenturyLink, FairPoint, Frontier, Verizon and Windstream on July 29, 2011 for this proceeding labeled "America's Broadband Connectivity Plan" (ABC Plan). The ABC Plan states, "...The supported broadband service must provide access to voice service, but voice service is not supported by the CAF and CAF recipients are not required to offer voice service...."

also indicates funding would not support voice service. This proposed arrangement is troubling and perhaps contrary to the basic principles of universal service. Under this provision of the ABC Plan disagreements may surface concerning what constitutes ensuring consumers have “access” to voice service. Resolving voice service-related problems may also result in “finger pointing” and a lack of accountability. Such an arrangement appears entirely contrary to the basic universal service principles and priorities recently identified by the FCC.<sup>4</sup> It is not clear how a plan simply promoting “access” to voice service satisfies the goal of “preserving and advancing voice service”.

*Reform Should Overhaul the USF Contribution System.*

As previously described in prior MoPSC comments, USF reform should include reforming how the USF is funded.<sup>5</sup> A top priority for USF reform should be limiting the contribution burden placed on households. Unfortunately few, if any, USF reform proposals reduce the overall size of the USF. This prospect suggests consumers will not see any relief in the years to come. The MoPSC urges the FCC to follow through and complete prior rulemakings exploring ways to reform USF funding. The FCC needs to provide some limited consumer relief even if the overall size of the fund remains unchanged.

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<sup>4</sup> Universal service principles are identified in 47 U.S.C. 254(b). The FCC’s Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking released within these proceedings on February 9, 2011 identified four principles for reforming USF and ICC (Paragraph 10). “Accountability” is one of the FCC’s four principles for reform. Likewise Paragraph 80 describes the FCC’s universal service priorities whereby the FCC states, “First, the program must preserve and advance voice service....”

<sup>5</sup> April 6, 2011 MoPSC Comments filed in this proceeding, page 4. See also MoPSC Comments filed November 5, 2008 in WC Docket No. 05-337, CC Docket No. 96-45, et al.

## **B. Public Interest Obligations**

The FCC is seeking feedback on effective milestones for ensuring any carrier receiving support is building out broadband at a reasonable rate. In this discussion the FCC asks if the FCC should adopt reporting requirements for supported providers regarding pricing and usage allowances to ensure consumers in rural areas are receiving reasonably comparable services at reasonably comparable rates. The MoPSC continues to maintain the public interest obligations identified in prior MoPSC comments in this proceeding: (1) ETC designation should continue to be a requirement for any company receiving high-cost support. (2) Existing MoPSC rules identify ETC requirements. (3) ETCs track the quality of service provided to customers. (4) Require ETCs to offer voice service as a standalone service and at an affordable rate. (5) Broadband speed should be based on actual and not advertised speed.<sup>6</sup> The MoPSC recommends the FCC establish specific reporting requirements for high-cost support recipients. In addition, the MoPSC supports establishing broadband deployment milestones.

### *Establish Specific Reporting Requirements for High-Cost Support Recipients.*

High-cost support recipients should be held accountable by requiring them to track and maintain certain information ensuring they are using funding appropriately and they are providing acceptable and reasonable voice/broadband services. Such information should be provided at least annually to the respective state commissions, USAC and FCC. In addition, such information should be available upon request by these same entities if issues or problems surface and the entity desires such information on a more frequent basis.

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<sup>6</sup> Pages 5-7 of MoPSC Comments filed on April 6, 2011 in this proceeding identifying five public interest obligations of ETCs.

The type of information high-cost recipients should be prepared to provide includes:

- 1) An explanation of how high-cost support is being used.
- 2) The company's updated plan for achieving and maintaining universally available voice and broadband services.
- 3) The quality of service provided to customers.<sup>7</sup>
- 4) The number of complaints based on general types of complaint issues.
- 5) The percentage of households with access to the company's broadband service.
- 6) Maps showing the availability of the company's broadband service.
- 7) The actual broadband speed provided to customers.
- 8) Prices for voice and broadband services, including any usage restrictions. In addition, a demonstration the company's offerings in rural areas are reasonably comparable to urban areas.

#### *Establish Broadband Deployment Milestones*

The MoPSC supports the establishment of broadband deployment milestones whereby carriers receiving support will be expected to provide broadband to a certain percentage of customers. The proposed broadband deployment milestones identified by the State Members of the Federal-State Joint Board on Universal Service are reasonable milestones.<sup>8</sup> At a minimum, certain concepts should be incorporated into the establishment of broadband deployment milestones. For example, a company's funding

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<sup>7</sup> The MoPSC recommends companies adequately demonstrate the following quality of service measures for voice and broadband services: (1) Service is installed in a timely manner. (2) Out-of-service conditions are resolved in a timely manner. (3) Number of Trouble reports per 100 lines. (4) Unfulfilled service requests.

<sup>8</sup> These milestones are found on page 64 of the Comments filed by the State Members of the Federal-State Joint Board on Universal Service, WC Docket No. 10-90 et al. Under this proposal minimum and full availability ranges of percentage of customers with access to the company's broadband service is established for the first, third and fifth year. This proposal also gradually increases the minimum downward speed. A carrier failing to obtain the minimum range loses all support while a carrier operating within the range receives a pro rata share of support. Only if a carrier meets or exceeds the maximum range will a carrier receive full support.

support should be negatively affected if a company fails to meet a milestone. A minimum and full availability range should be established for any broadband deployment milestone whereby support is prorated if a company's broadband deployment percentage falls within this range. Failure to meet the minimum broadband deployment milestone should cause a company to lose high-cost support. Broadband deployment milestones should also attempt to require increasing higher levels of download and upload speeds.

### **C. State Role**

The FCC seeks feedback on how states could work in partnership with the FCC in advancing universal service. The MoPSC recommends the FCC maintain the requirement for an ETC receiving high-cost support to annually obtain state certification. In addition, the MoPSC describes how states can help the FCC; however, the MoPSC suggests the FCC not require states to collect customer complaint information.

*Maintain the requirement for an ETC receiving high-cost support to annually obtain state certification.*

The FCC should continue the requirement for an ETC receiving high-cost support to annually obtain state certification.<sup>9</sup> This requirement should be clarified to include any ETC regardless of whether the state regulatory commission has jurisdiction over the carrier. At a minimum the FCC should require an ETC to file with states, copies of all information submitted to the FCC or USAC regarding compliance with public interest obligations. This information would also presumably include the previously described annual filing containing information related to the fulfillment of public interest obligations. In this respect, states can help review such information and point out issues

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<sup>9</sup> Sections 54.313 and 54.314 describe this annual certification process.



if concerns exist regarding a carrier's compliance with public interest and other obligations.

*Depending on the FCC's ultimate reform measures, a state could help administer proceedings designed to address certain specific issues.*

The FCC's Further Inquiry identifies several instances whereby certain decisions or determinations would need to be made.<sup>10</sup> States should be given the option to participate in helping to address such issues. The FCC should provide as much guidance as possible to the states in order to ensure some consistency between states. In addition, time frames should be provided to ensure matters are handled in a timely but reasonable manner. The preferred method of state involvement would be if a state commission is delegated with the authority to make such decisions. In this arrangement an aggrieved party has the ability to appeal a state commission's decision to the FCC.

*Do not require states to collect information regarding customer complaints.*

The FCC's Further Inquiry specifically asks if states should collect information regarding customer complaints, including complaints about unfulfilled service requests and inadequate service. The MoPSC recommends the FCC simply direct companies to compile complaint information as previously discussed in these comments. Requiring states to collect complaint information may create confusion. For example, if states are charged with the responsibility to collect complaints concerning broadband service then consumers may erroneously believe states have the authority to resolve such complaints.

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<sup>10</sup> Some examples included in the FCC's Further Inquiry concern the ABC Plan's Right-of-First Refusal proposal whereby a carrier's funding can be affected if it is determined the carrier has already made a substantial broadband investment to a given area. A state commission can help determine if a carrier has made such an investment. Another example is the RLEC's plan to reduce an incumbent's support if another unsubsidized facilities-based provider provides broadband to at least 95 percent of the households in a given area. A state commission can help determine if a unsubsidized facilities-based provider offers broadband service to such a percentage of households in a particular area.

#### **D. Ensuring Consumer Equity**

*The MoPSC supports the establishment of benchmark local service rates.<sup>11</sup>*

The FCC's Further Inquiry seeks feedback on rate benchmarks in the context of USF reform. If benchmark rates are adopted, a carrier's high-cost support will be reduced if rates remain below benchmark rates. Such a concept makes sense and the FCC should strive to establish the same benchmarks in terms of obtaining any federal support including support for reforming intercarrier compensation. The specific benchmark rate levels identified in the FCC's Further Inquiry appear reasonable and consistent with prior MoPSC comments.<sup>12</sup> The MoPSC previously supplied information indicating Missouri's average residential local service rate was \$17.11 which does not include the subscriber line charge. In further contemplation of benchmark rates the FCC should also consider establishing benchmark rates for broadband and other non-regulated services that use the same network.

#### **E. Allocating Support in High-Cost Areas**

The FCC's Further Inquiry seeks comment on issues related to the use of a model, specifically seeking information that would need to be filed in the record regarding the CostQuest Broadband Analysis Tool (CQBAT model). A USTelecom ex parte filing notes, "[Various entities discussed with the FCC] approaches to providing additional public information concerning the CQBAT as well as to providing access to the model and model reports for the FCC and for third parties. Access to the model could be

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<sup>11</sup> The Commission's April 2011 comments in this proceeding expressed support for the establishment of benchmark rates in the context of providing funding for intercarrier compensation reform (pages 21-22).

<sup>12</sup> The FCC's Further Inquiry identifies a monthly local service rate of \$15.62 + \$5.74 subscriber line charge for a total of \$21.26 per month. This benchmark could then rise over a period of time whereby the resulting rate could be \$25 to \$30.

provided through a licensing agreement or agreements depending on the level of access and reporting desired. More detailed access to certain inputs could require an additional licensing agreement with the data source. Access to model source code would likely require an additional nondisclosure agreement and could potentially occur on-site at CostQuest's facilities."<sup>13</sup> Without readily available access to the model, its inputs and its data source, it is not clear how the FCC might begin to support the ABC Plan. Such an approach would be tantamount to the USAC signing a blank check for all future high-cost support payments. Before the FCC can adopt any model and before USAC can rely on such model for support calculations, access to the model must be provided to those entities charged with ensuring accountability and sustainability of the fund.

#### **F. Highest-Cost Areas**

##### *Require High-Cost Recipients to Help Facilitate Broadband Provisioning.*

The FCC's Further Inquiry seeks comment on what obligations are appropriate to impose on high-cost recipients in serving extremely high-cost areas. The FCC's Further Inquiry specifically seeks feedback on whether recipients should make interconnection points and backhaul capacity available. In addition the FCC asks if carriers should be required to allow customers to share their broadband connections with unserved nearby customers through WiFi combined with directional antenna technology. Such proposals seem reasonable in promoting the goal of universal availability of broadband service. Consequently the FCC should establish such requirements. If a high-cost recipient finds such a requirement to be unreasonable for a specific situation then the high-cost recipient

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<sup>13</sup> Ex Parte. US Telecom. August 10, 2011. CC Docket No. 01-92 et al.

shall have the burden to prove such an arrangement is unreasonable. As previously discussed, states could assist in addressing such matters.

## **II. INTERCARRIER COMPENSATION REFORM**

### **A. Federal-State Roles**

In general, tension appears to exist concerning the issue of pre-emption whereby the ABC Plan is proposing federal pre-emption of state authority in reforming intrastate access rates. The FCC and states should strive for a cooperative approach; however, ultimately the FCC should establish a “backstop” approach. This concept, as well as other feedback concerning intercarrier compensation reform, is further described in the remainder of these comments.

*The FCC should establish a “backstop” approach for reducing intrastate access rates.*

The FCC’s Further Inquiry seeks alternative approaches to reducing intrastate access rates. As recommended in prior MoPSC comments the FCC should simply set a schedule for achieving certain intercarrier compensation reform objectives. States should be allowed to accelerate intrastate access reform; however, a state should not be allowed to delay access reform. On a practical basis some of the proposed time frames for reducing intrastate access rates to parity with interstate access rates are extremely aggressive.<sup>14</sup> Such time frames make it highly unlikely for any state to initiate and ultimately accelerate intrastate access rate reform. If the FCC is seeking state involvement to reduce intrastate access rates then the FCC should carefully consider the parity deadline. The MoPSC maintains its prior suggestion that companies be given at least five years to reach parity. A time frame of less than five years will frustrate and

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<sup>14</sup> The ABC Plan proposes intrastate terminating access rates reach parity with interstate rates by July 1, 2013 for price cap companies and July 1, 2014 for rate-of-return companies.

decrease the probability for any state action and could place significant burdens on the consumer.

*Federal Funding Support for Reforming Intercarrier Compensation Should be Dependent on a Carrier's Rates Meeting or Exceeding Benchmark Rates.*

As previously pointed out in these comments the MoPSC supports the concept of benchmark rates whereby support is dependent upon a carrier's rates. At a minimum benchmark rates should be established for local service and broadband service. In addition, for ease of administration the same benchmark rate levels should be established for both intercarrier compensation reform and universal reform.

*Federal Support Should Not be Dependent on State USF Recovery.*

Federal support for reforming intercarrier compensation should not be dependent on whether a state is using a state universal service fund for reducing intrastate access rates. States will be unfairly penalized if they have not established a state USF for such purposes. State laws may even need to be changed in order for states to consider such action. Therefore, instead of correlating federal support to state USF contributions the FCC should simply correlate federal support to the previously described benchmark rate concept.

*Encourage State Action by Clearly Establishing Deadlines, Benchmarks and Federal Support.*

The FCC can help states determine whether additional state action is needed for intercarrier compensation reform by clearly establishing deadlines for reaching parity and other goals. In addition the FCC should establish benchmark rates and clarify how federal support will be determined. Essentially states need to know all of the parameters associated with intercarrier compensation reform in order to evaluate the need for state

action. States will only be in a position to evaluate the need for state action by reviewing company-specific impacts of the FCC intercarrier compensation reform decisions. Companies should be required to provide to their respective state commissions how they intend to comply with FCC intercarrier compensation reform absent any state action. Such information should be provided to a state commission in a timely manner in order for a state commission to evaluate the need to help with intercarrier compensation reform efforts.

## **B. Scope of Reform**

### *Support Efforts to Initially Reform Terminating Switched Access Rates*

The MoPSC supports initially limiting intercarrier compensation reform to terminating switched access rates. Terminating switched access service is more closely aligned to a monopoly-type service whereby a carrier is forced to pay the terminating switched access rates of the terminating carrier. In contrast, originating switched access service is less of a monopoly service. For instance, many incumbent local telephone companies offer interexchange service through an affiliate who pays the incumbent's originating switched access rates.<sup>15</sup> Limiting initial intercarrier compensation efforts on terminating switched access rates should not be problematic or cause arbitrage problems. Moreover, initially limiting access reform to terminating switched access rates will help ease revenue recovery issues.

## **C. Recovery Mechanism**

*A federal/state partnership could potentially help reform efforts.*

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<sup>15</sup> This observation is noted in Footnote No. 55 of the FCC's Further Inquiry in discussing the prospect of different revenue recovery mechanisms for originating access service.

The FCC's Further Inquiry notes the ABC Plan's proposal to shift recovery of reduced intrastate access revenues solely to the federal jurisdiction. In considering the ABC Plan's proposal the FCC seeks feedback on whether more comprehensive reform could be achieved through a federal-state partnership. The MoPSC supports a federal-state partnership as it has the potential to help achieve more comprehensive reform efforts; however, as previously indicated states will need to know all the parameters for access reform.

*Any Recovery Mechanism Should Consider Access Expense Savings of Affiliated Companies.*

The FCC's Further Inquiry seeks feedback concerning originating access and notes how in many cases the originating incumbent LEC's affiliate is offering long distance service. In such instances the incumbent's reduced access revenue is offset by the affiliate's savings in access expense. The FCC seeks feedback on whether such reduced revenues should be treated differently for recovery purposes. Such instances highlight how the financial impact to the parent company is minimized by the off-setting impacts. Therefore, the MoPSC supports efforts to limit any recovery mechanism from recovering reduced access revenues of an incumbent's long distance affiliate. Stated differently, revenue recovery should not be limited to solely recovering reduced access revenues of the incumbent but rather revenue recovery should also take into account access expense savings experienced by the incumbent and any affiliated companies.

#### **D. Impact on Consumers**

*Closely Monitor Prices for Retail Services Benefiting from Inter-carrier Compensation Reform.*

The ABC Plan recommends the market should solely determine whether companies will pass through the benefits of inter-carrier compensation reform. In

response to this recommendation the FCC seeks feedback on whether any steps should be taken to ensure such benefits are realized by consumers. Admittedly forcing any carrier to pass-through access expense savings to consumers is difficult to enforce. Missouri statutes have a provision requiring a company to flow-through access expense savings to consumers which are caused by rate rebalancing by price cap carriers; however, this provision also allows a company to defer any rate reductions until such reductions, on a cumulative basis, reach a level that is practical to flow through to its customers.<sup>16</sup> Company compliance is mixed. Most companies claim the access expense savings is insignificant or alternatively many companies claim access expense savings resulted in a delay in the company's plans to increase toll rates. Most carriers benefiting from intercarrier compensation reform have complete pricing flexibility for retail services, therefore the MoPSC's recommendation is to closely monitor prices for retail services benefiting from access reform. The MoPSC anticipates all companies should eliminate special surcharges commonly applied to consumer bills to reflect higher intrastate access rates.<sup>17</sup> Ultimately, closely monitoring retail prices should reveal whether consumers are benefiting, but if not then the FCC should be prepared to ask companies why consumers do not appear to be benefiting.

#### **E. VoIP Intercarrier Compensation**

##### *VoIP Traffic Should Be Subject to Same Compensation as Other Access Traffic*

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<sup>16</sup> Section 392.245.10 RSMo states, "Any telecommunications company whose intrastate access costs are reduced pursuant to subsections 8 and 9 of this section shall decrease its rates for intrastate toll telecommunications service to flow through such reduced costs to its customers. The commission may permit a telecommunications company to defer a rate reduction required by this subdivision until such reductions, on a cumulative basis, reach a level that is practical to flow through to its customers."

<sup>17</sup> For example, many interexchange carriers label such surcharges as an "intrastate access recovery fee" or similar term. The concept behind this type of surcharge is to recover the additional expense of a state's higher intrastate access rates in comparison to other intrastate access rates and/or interstate access rates.



The ABC Plan proposes to subject VoIP traffic to different access rates than other traffic. This type of proposal appears contrary to the basic goal of attempting to unify the intercarrier compensation rates for all forms of traffic.<sup>18</sup> In addition, applying different rates based on traffic type will promote arbitrage opportunities whereby companies will mislabel traffic in order to allow such traffic to qualify for a lower intercarrier compensation rate. Moreover, although the VoIP provider can identify its own traffic for purposes of USF contributions and 911 applicability, it is difficult to understand how terminating carriers will be able to easily identify traffic as VoIP traffic. Consequently the MoPSC recommends VoIP traffic be subject to the same compensation arrangements as other access traffic.

#### **F. Summary**

Any universal service reform efforts should ensure voice service remains reliable and affordable. In addition such efforts should overhaul the USF contribution system. These comments recommend certain public interest obligations be applied to high-cost support recipients including specific reporting requirements. Funding support should be dependent on a carrier meeting broadband deployment milestones as well as benchmark rates for services using the same network. These comments provide feedback on how states can work in partnership in advancing universal service. Concerns are expressed regarding the CQBAT cost model. High-cost recipients should be required to help facilitate broadband provisioning.

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<sup>18</sup> For example, the FCC previously attempted to identify problems with the current intercarrier compensation system whereby one problem is, "...rates vary based on the type of provider and where the call originated, even though the function of originating or terminating a call does not change..." (Paragraph No. 495 of the FCC's February 9, 2011 Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking issued in this proceeding.)

The FCC should establish a backstop approach for reducing intrastate access rates. Any recovery mechanism designed to help replace reduced access revenues should be dependent upon a carrier's rates meeting or exceeding certain benchmark rates. Recovery should also consider any access expense savings experienced by the incumbent or an affiliated company. Federal support should not be dependent upon whether a state is already using a state universal service fund for access reform. Instead the FCC could encourage state access reform efforts by clearly establishing deadlines and benchmark rates. In addition, the FCC needs to fully explain how federal support will be provisioned. Such information, along with a directive for companies to provide to their respective state commissions their plans for reforming intrastate access rates will help states evaluate the need for further action. Access reform should initially be limited to reforming terminating switched access rates. VoIP traffic should be subject to the same compensation arrangements as other access traffic.

Respectfully submitted,



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